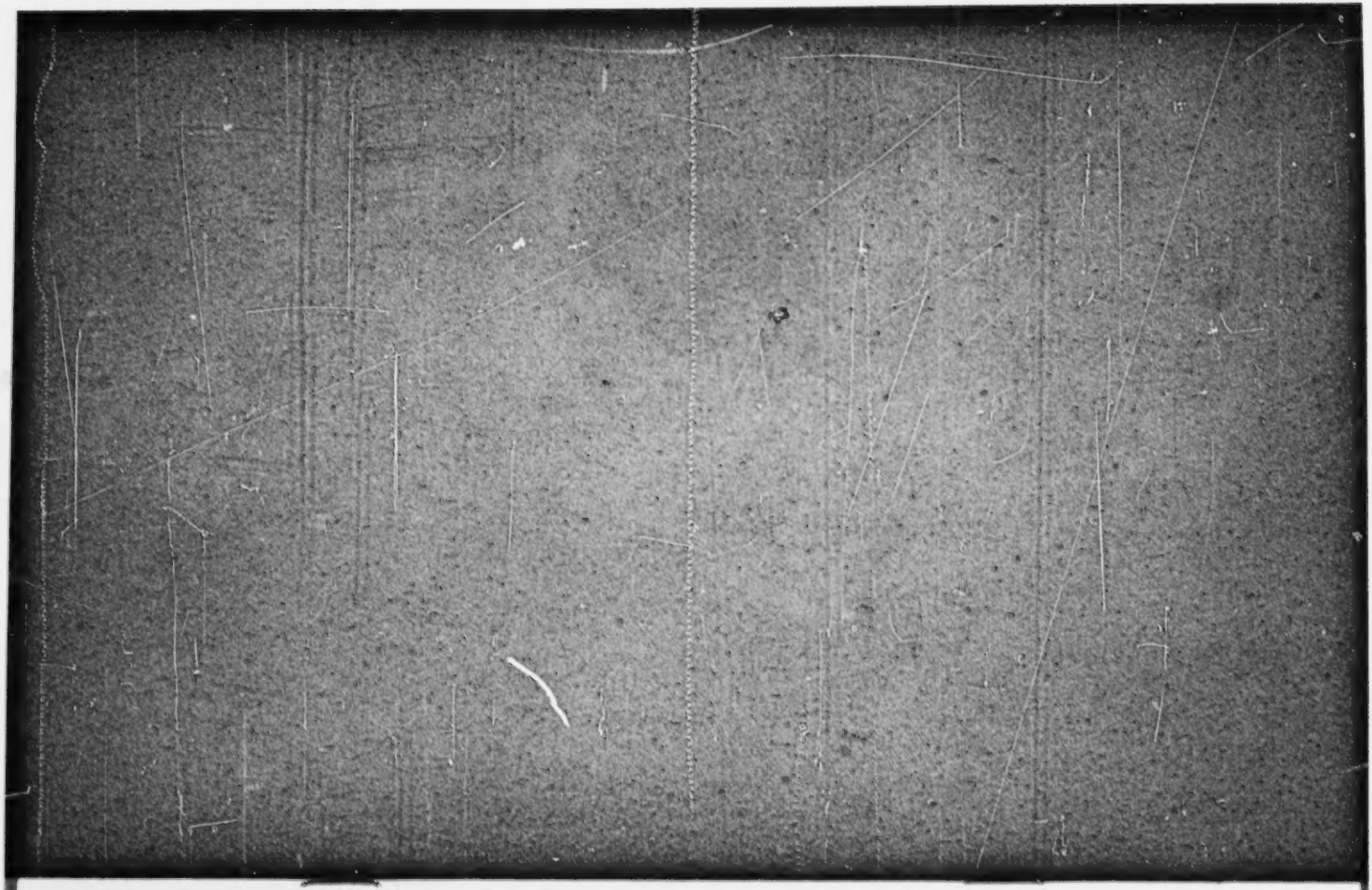

SUPREME COURT, U. S
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1657

ESTATE OF JOSEPH M. MEADE, ETC., ET. AL.,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE

PETITION FOR REHEARING ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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The petitioners filed on May 6, 1974, a petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit. This Court, on July 31, 1974, requested that the respondent file an answer which should reach the office of the clerk on or before August 30, 1974. The respondent's answer was not filed in the clerk's office until September 6, 1974. The petitioners' counsel did not receive a copy of the respondent's memorandum until on or about September 10, 1974. The Court, on October 15, 1974, denied the petition for a writ of certiorari, with Mr. Justice Douglas, Mr. Justice Stewart, and Mr. Justice White voting to grant certiorari.

THE PETITIONERS RESPECTFULLY FILE THIS PETITION FOR A REHEARING BECAUSE THE COURT MAY HAVE BEEN INADVERTENTLY INFLUENCED IN DENYING THE WRIT OF CERTIORARI BY A SUBSTANTIAL MISTATEMENT OF LAW CONTAINED IN THE MEMORANDUM FOR THE RESPONDENT IN OPPOSITION.

The issue involved in this case is whether the court below, in reversing the decision of the Tax Court, properly applied the origin of litigation rules of this Court. The specific issue being whether the origin of a claim received through a corporate liquidation is the original wrongful act which created the claim or the corporate liquidation through which the claim was received by the taxpayer.

The respondent's Memorandum in Opposition (page 4) states:

> "Indeed, petitioners' emphasis on the historical roots of the antitrust claim implicitly suggests that they are entitled to the same ordinary deduction treatment that their corporation would have received had it incurred these costs in enforcing the claim prior to the liquidation. Such an assumption overlooks the decisive fact of the corporate liquidation. Prior to that event, the claim was a business property in the hands of the corporation, the recovery of which would have been taxable as ordinary income. The costs incurred by the corporation in seeking recovery of such an ordinary income item would have been deductible from ordinary income. However, once the corporation liquidated and distributed the claim to petitioners, it took on the nature of an investment or capital asset in the hands of the shareholders."

THE PRECEDING STATEMENT OF LAW IS IN ITS ENTIRETY INCORRECT AND IS NOT SUPPORTED BY ANY STATUTE, REGULATIONS, RULINGS OR CASES AND IS IN DIRECT CONFLICT WITH ALL EXISTING LAW ON THE SUBJECT.

Counsell for petitioners apologizes to the Court for his inability to bring the above issue to the attention of the Court priior to its consideration of the petition for writ of certiorari. The respondent's memorandum in opposition was not filed until the 6th day of September, 1974, which was seven (7) days after the date specified for filing the answer. The petitioners did not receive a copy until on or about September 10, 1974. Because of the late filing of the memorandum by the respondent, the petitioners did not have sufficient time to submit a timely reply on the above issues.

Due to the importance of this case, as to the proper application of this Court's Origin of Litigation Rule, the petitioners respectfully request the Court to ask the respondent to file an answer to the Petitioners' Memorandum submitted with this petition for rehearing, and, if this Court determines that the respondent's memorandum in opposition previously submitted does contain substantial errors of law, which could have inadvertently influenced this Court in denying the writ of certiorari, then the Court will grant the petitioners a rehearing on the petition for writ of certiorari.

Respectfully Submitted,

J. Gilmer Blackburn
P. O. Box 757
Decatur, Alabama 35601

COUNSEL FOR PETITIONERS

CERTIFICATE OF COUNSEL

As counsel for the petitioners, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

J. Gilmer Blackburn
P. O. Box 757
Decatur, Alabama 35601

COUNSEL FOR PETITIONERS

CERTIFICATE OF SERVICE

I hereby certify that on the ..... day of ....., 1974, three copies of the Petition For Rehearing on a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was mailed, postage prepaid to Robert H. Bork, Solicitor General, Department of Justice, Washington, D.C. 26530.

.....

J. Gilmer Blackburn
P. O. Box 757
Decatur, Alabama 35601

COUNSEL FOR PETITIONERS